

# September 9, 2009

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at [www.yolo.courts.ca.gov](http://www.yolo.courts.ca.gov). If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Fifteen: (530) 406-6942  
Department Eight: (530) 406-6848

## TENTATIVE RULING

**Case: Fortis Capital LLC v. Woy**  
**Case No. CV G 09-810**

**Hearing Date:** September 9, 2009      **Department Fifteen**      **9:00 a.m.**

The unopposed motion to have the truth of the matters stated in the plaintiff's first set of request for admissions to the defendant deemed admitted is **GRANTED**. (Code Civ. Proc., § 2033.280, subds. (b) and (c).) The request for monetary sanctions against Martin Woy is **GRANTED** in the amount of \$140.00. (Code Civ. Proc., § 2033.280, subd. (c).)

Plaintiff shall serve a copy of this order on Martin Woy by no later than September 11, 2009.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice, except as provided herein, is required.

## TENTATIVE RULING

**Case:** **Naidu v. Patel, et al.**  
**Case No. CV CV 09-590**

**Hearing Date:** September 9, 2009 **Department Fifteen** **9:00 a.m.**

Plaintiffs' demurrer to Defendants' answer is **SUSTAINED WITH LEAVE TO AMEND IN PART** as follows: The demurrer to the third, fourth, tenth, thirteenth, seventeenth, eighteenth and thirty-third affirmative defenses set forth in Defendants' answer is **SUSTAINED WITH LEAVE TO AMEND**. The demurrer to the remaining affirmative defenses set forth in Defendants' answer is **OVERRULED**.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

## TENTATIVE RULING

**Case:** **Slaven v. Cramer**  
**Case No. CV CV 07-2674**  
**Hearing Date:** **September 9, 2009** **Department Eight** **9:00 a.m.**

### **Motion for Summary Judgment by Defendant Jack Cramer:**

Defendant Jack Cramer's motion for summary judgment is **DENIED**. Defendant failed to show that plaintiffs lack standing. (Code Civ. Proc., § 437c; Undisputed Material Fact 27, Plaintiffs' Additional Undisputed Material Facts 41 & 42.) The Court finds that in light of all the circumstances, the term "insurance company(ies)" in the assignment clause is fairly susceptible to plaintiffs' interpretation that plaintiffs did not assign their causes of action or claims against Jack Cramer. (*Pacific Gas and Electric Co. v. G.W. Thomas Drayage & Rigging Co.* (1968) 69 Cal.2d 33, 37-40; Defendant Jack Cramer's Exhibit E; Declaration of Robert Lea, ¶¶ 1-3; Declaration of William Slaven ¶¶ 1-5.)

Defendant Jack Cramer's request for judicial notice is **GRANTED**. (Evid. Code, § 452, subd. (d).)

Defendant Jack Cramer's objection to evidence number 7 is **SUSTAINED**. All other objections are **OVERRULED**. (Civ. Code, § 1636; Code Civ. Proc., § 1860; *Voorheis v. Hawthorne-Michaels Company* (1957) 151 Cal.App.2d 688; *Pacific Gas and Electric Co. v. G.W. Thomas Drayage & Rigging Co.*, *supra*, 69 Cal.2d 33.)

Plaintiffs' request for judicial notice is **GRANTED**. (Evid. Code, § 452, subd. (d).)

Plaintiffs' evidentiary objections are **OVERRULED**. (Evid. Code, § 350; Declaration of Bret Batchman, ¶¶ 3 & 4, Exhs. N & O.)

Plaintiffs are directed to prepare a formal order consistent with this ruling and in accordance with Code of Civil Procedure section 437c, subdivision (g) and California Rules of Court, rule 3.1312.

### **Motion for Summary Judgment, or in the alternative, Summary Adjudication by Defendants Nationwide Mutual Insurance Company and Allied Property and Casualty Insurance Company:**

Defendants Nationwide Mutual Insurance Company ("Nationwide") and Allied Property and Casualty Insurance Company's ("Allied") motion for summary judgment, or in the alternative, summary adjudication, is **DENIED**. Plaintiffs produced admissible evidence showing triable issues of fact exist as to whether Mr. Cramer was an agent of Defendants; whether Defendants knew or should have known that Mr. Cramer was holding himself out to the public as having certain powers to act on their behalf; and whether Plaintiffs reasonably believed that Mr. Cramer was acting under Defendants' authority. (Code Civ. Proc., § 437c, subd. (p)(1); Civ. Code, §§ 2298 & 2299; Undisputed Material Fact 17; Plaintiff's Additional Undisputed

Material Facts 22-31; *Preis v. American Indem. Co.* (1990) 220 Cal.App.3d 752; *Desai v. Farmers Ins. Exchange* (1996) 47 Cal.App.4th 1110.)

Defendants' motion for summary adjudication of the first cause of action for negligence in plaintiffs' first amended complaint is **GRANTED**. Negligence is not among the theories of recovery generally available against insurers. (*Sanchez v. Lindsey Morden Claims Services, Inc.* (1999) 72 Cal.App.4th 249, 254.)

Defendants' motion for summary adjudication of the remaining causes of action is **DENIED**. (Code Civ. Proc., § 437c, subd. (p)(1); Civ. Code, §§ 2298 & 2299; Undisputed Material Fact 17; Plaintiff's Additional Undisputed Material Facts 22-31; *Preis v. American Indem. Co.* (1990) 220 Cal.App.3d 752; *Desai v. Farmers Ins. Exchange* (1996) 47 Cal.App.4th 1110.)

Defendants' objection to Plaintiffs' evidence number 5 is **SUSTAINED**. All other objections to Plaintiffs' evidence are **OVERRULED**. (Civ. Code, § 1636; Code Civ. Proc., § 1860; *Voorheis v. Hawthorne-Michaels Company* (1957) 151 Cal.App.2d 688; *Pacific Gas and Electric Co. v. G.W. Thomas Drayage & Rigging Co.*, *supra*, 69 Cal.2d 33.)

Defendants' request for judicial notice is **GRANTED**. (Evid. Code, § 452, subd. (d).)

Plaintiffs' requests for judicial notice are **GRANTED**. (Evid. Code, § 452, subds. (d) & (h).)